

1 Andrew P. Gordon (NV Bar No. 3421)
Jeffery A. Silvestri (NV Bar No. 5779)
2 MCDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
3 Las Vegas, NV 89102
Phone: (702) 873-4100
4 Facsimile: (702) 873-9966
Email: agordon@mcdonaldcarano.com
5 Email: jsilvestri@mcdonaldcarano.com

6 Brenton R. Babcock (admitted *pro hac vice*)
KNOBBE, MARTENS, OLSON & BEAR, LLP
7 2040 Main Street, Fourteenth Floor
Irvine, CA 92614
8 Phone: (949) 760-0404
Facsimile: (949) 760-9502
9 Email: brent.babcock@kmob.com

10 Frederick S. Berretta (admitted *pro hac vice*)
Phillip Bennett (admitted *pro hac vice*)
11 KNOBBE, MARTENS, OLSON & BEAR, LLP
12790 El Camino Real
12 San Diego, CA 92130
Phone: (858) 707-4000
13 Facsimile: (858) 707-4001
Email: fred.berretta@kmob.com
14 Email: phillip.bennett@kmob.com

15 Attorneys for Plaintiff/Counterdefendant
SILVER STATE INTELLECTUAL TECHNOLOGIES, INC.
16

17 James J. Pisanelli (NV Bar No. 4027)
Jennifer L. Braster (NV Bar No. 9982)
18 PISANELLI BICE, PLLC
3883 Howard Hughes Parkway, Suite 800
19 Las Vegas, NV 89169
Phone: (702) 214-2100
20 Facsimile: (702) 214-2101
Email: JJP@pisanellibice.com
21 Email: JLB@pisanellibice.com

22 Adam P. Seitz (admitted *pro hac vice*)
Abran J. Kean (admitted *pro hac vice*)
23 ERISE IP, P.A.
5251 W. 116th Place, Suite 200
24 Leawood, KS 66211
Phone: (913) 777-5600
25 Facsimile: (913) 777-5601
Email: aseitz@eriseip.com
26 Email: akean@eriseip.com

27 Attorneys for Defendants/Counterclaimants
GARMIN INTERNATIONAL, INC. and GARMIN USA, INC.
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SILVER STATE INTELLECTUAL
TECHNOLOGIES, INC., a Nevada
corporation,

Plaintiff/Counterdefendant,

v.

GARMIN INTERNATIONAL, INC., a
Kansas corporation, and GARMIN USA,
INC., a Kansas corporation,

Defendants/Counterclaimants.

) Case No. 2:11-cv-1578-ECR-RJJ
)
) **STIPULATED PROTECTIVE**
) **ORDER**

1 such are limited to extremely sensitive information and items, the disclosure of
2 which to another party or nonparty would create a substantial risk of serious
3 injury to the business or competitive interests of the Producing Party that could
4 not be avoided by less restrictive means. Nothing in this Protective Order
5 should be interpreted as requiring any Party to produce any Source Code.

6 d. Confidential documents shall be so designated by stamping copies of
7 the document produced to a party with the legend "CONFIDENTIAL" or
8 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" on each page of the
9 document, preferably in the lower right-hand corner of the document, or as
10 close thereto as feasible. In the event that only selected pages of a bound
11 multiple-page document are stamped with the "CONFIDENTIAL" or
12 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" legend (e.g., responses to
13 discovery requests), the first page of the bound document shall also be
14 stamped with the "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS'
15 EYES ONLY" legend to prevent accidental disclosure of the Confidential
16 contents of the document.

17 5. In the event the producing party elects to produce materials for inspection, no
18 marking need be made by the producing party in advance of the initial inspection. For
19 purposes of the initial inspection, other than source code, all materials produced will be
20 considered as "CONFIDENTIAL - ATTORNEYS' EYES ONLY," and must be treated as
21 such pursuant to the terms of this Order. No copies shall be made or retained during the
22 inspection. Thereafter, upon selection of specified materials for copying by the inspecting
23 party, the producing party must, within a reasonable time prior to producing those materials
24 to the inspecting party, mark the copies of those materials that contain Confidential
25 Information with the appropriate confidentiality marking. Any document identified on a
26 privilege log may be withheld by the producing party, and its inclusion in the documents for
27 inspection shall not be deemed a waiver of any privilege.

28 ///

1 6. Whenever a deposition taken on behalf of any party involves a disclosure of
2 Confidential Information of any party:

3 a. the deposition or portions of the deposition must be designated as
4 containing Confidential Information subject to the provisions of this Order;
5 such designation must be made on the record whenever possible, but a party
6 may designate portions of depositions as containing Confidential Information
7 after transcription of the proceedings; a party will have until fourteen (14) days
8 after receipt of the deposition transcript to inform the other party or parties to
9 the action of the portions of the transcript to be designated
10 “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
11 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

12 b. the disclosing party will have the right to exclude from attendance at
13 the deposition, during such time as the Confidential Information is to be
14 disclosed, any person other than the deponent, Counsel (including their staff
15 and associates), the court reporter, and the person(s) agreed upon pursuant to
16 paragraph 8 below; and

17 c. the originals of the deposition transcripts and all copies of the
18 deposition must bear the legend “CONFIDENTIAL,” “CONFIDENTIAL -
19 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
20 CODE,” as appropriate, and the original or any copy ultimately presented to a
21 court for filing must not be filed unless it can be accomplished under seal,
22 identified as being subject to this Order, and protected from being opened
23 except by order of this Court.

24 7. All Confidential Information designated as “CONFIDENTIAL,”
25 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
26 SOURCE CODE” must not be disclosed by the receiving party to anyone other than those
27 persons designated within this order and must be handled in the manner set forth below and,
28 in any event, must not be used for any purpose other than in connection with this litigation,

1 unless and until such designation is removed either by agreement of the parties, or by order of
2 the Court.

3 8. Information designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY"
4 must be viewed only by:

- 5 a. Counsel (as defined in paragraph 3) of the receiving party;
- 6 b. Independent experts or consultants under the conditions set forth in this
7 Paragraph;
- 8 c. Court reporters employed by any party in this action;
- 9 d. Judges, law clerks, court reporters, and other clerical personnel of the
10 Court before which this action is pending;
- 11 e. Stenographic and clerical employees associated with the individuals
12 identified above; and
- 13 f. Any other person as to whom the parties in writing agree.

14 The right of any independent expert or consultant to receive any Confidential
15 Information will be subject to the advance approval of such expert or consultant by the
16 producing party or by permission of the Court. The party seeking approval of an independent
17 expert or consultant must provide the producing party with the name and curriculum vitae of
18 the proposed independent expert or consultant, and an executed copy of the form attached
19 hereto as Exhibit A, in advance of providing any Confidential Information of the producing
20 party to the expert or consultant. In addition, the party seeking approval must include in its
21 written notice to opposing counsel an informed statement whether the independent expert or
22 consultant has presently or has had in the past a consulting relationship, or any other kind of
23 contractual or employment relationship, with either (i) the party receiving the Confidential
24 Information, or (ii) any company that manufactures or develops navigation devices.

25 Any objection by the producing party to an independent expert or consultant receiving
26 Confidential Information must be made in writing within fourteen (14) days following receipt
27 of the identification of the proposed expert or consultant. Confidential Information may be
28 disclosed to an independent expert or consultant if the fourteen (14) day period has passed

1 and no objection has been made. The approval of independent experts or consultants must not
2 be unreasonably withheld. In the event that the producing party objects in writing to the
3 proposed disclosure during the above-stated fourteen-day period, and the parties are unable to
4 agree whether the disclosure should be made, the party seeking disclosure must move the
5 Court for permission to disclose the Confidential Information. The objecting party shall
6 provide the grounds for such objection in writing within the above-stated fourteen-day period,
7 articulating those grounds with sufficient particularity to enable the party seeking disclosure
8 to move the Court for permission to disclose the Confidential Information. The objecting
9 party's grounds for objection to the proposed disclosure must include good cause for the
10 objection based, at least in part, on a claim of prejudice if the proposed disclosure is made.
11 No Confidential Information shall be disclosed to an independent expert or consultant until
12 any objections to the proposed disclosure of that material have been resolved by the parties or
13 the Court.

14 Opposing counsel agree that they will not depose or interview such expert or
15 consultant until and unless the expert is designated as a testifying expert by the party
16 proposing the disclosure, and that such designation must be timely made in accordance with
17 the applicable rules of procedure; provided, however, that nothing herein shall prevent a party
18 from seeking leave of Court to depose or interview such expert.

19 9. Information designated "CONFIDENTIAL" must be viewed only by the
20 persons authorized pursuant to the terms of paragraph 8, and by the additional individuals
21 listed below, provided each such individual has read this Order in advance of disclosure and
22 has agreed in writing to be bound by its terms:

- 23 a. Executives who are required to participate in policy decisions with
24 reference to this action;
- 25 b. Technical personnel of the parties with whom Counsel for the parties
26 find it necessary to consult, in the discretion of such Counsel, in preparation
27 for trial of this action; and

28 ///

1 c. Stenographic and clerical employees associated with the individuals
2 identified above.

3 10. Because of the highly sensitive nature of the Source Code and because of the
4 ease with which electronic media may be copied, transported, or stolen, the Receiving Party
5 will maintain the Source Code in a secure location. At the Receiving Party's request, Source
6 Code shall be made available in electronic form on a stand-alone, non-networked computer
7 with all parts, software and other avenues that could be used to copy or transfer such data
8 blocked, for inspection in the United States at the offices of counsel for the Producing Party
9 or at such other location as may be mutually agreed by the parties upon reasonable notice.
10 Only persons designated under paragraphs 8(a), (b), or (f) above shall have access to the
11 Standalone Computer provided, however, that the following restrictions shall apply to such
12 access:

- 13 a) at least three (3) business days prior to the date on which access is sought to such
14 Standalone Computer (three-day notice period), counsel of record for the
15 Receiving Party shall provide a list of individuals including attorneys seeking to
16 access such Standalone Computer and the Designating Party shall have the right to
17 object to such access in accordance with paragraph 8 herein, unless the
18 Designating Party has already had the opportunity to object to a paragraph 8(b)
19 expert under paragraph 8, in which case the Designating Party shall not have a
20 right to object to the expert accessing the source code;
- 21 b) during the pendency of the three day notice period, no listed individual shall have
22 access to the Standalone Computer;
- 23 c) if an objection to any specific listed individual is made, that individual shall not
24 have access to the Standalone Computer until resolution of such objection; and
- 25 d) each time a person accesses the Standalone Computer, the person shall sign a sign-
26 in sheet prior to, and a sign-out sheet subsequent to, accessing the Standalone
27 Computer including the name of the person accessing, the date and time in and
28 out, and whether any hard copies were made.

1 11. The Receiving Party may not make nor attempt to make additional copies of
2 the Source Code or convert the Source Code into any electronic form in any manner, except
3 as set forth herein.

4 e) A printer shall be attached to the Standalone Computer and the Receiving Party
5 shall make no more than 500 total pages of hard copies of “HIGHLY
6 CONFIDENTIAL – SOURCE CODE” material it in good faith considers to be
7 important to its analysis.

8 f) Whenever hard copies are made, copies of the hard copies shall be provided to
9 counsel for the Producing Party along with an identification of when the copies
10 were made and who made them.

11 g) Any hard copies shall be conspicuously marked “HIGHLY CONFIDENTIAL –
12 SOURCE CODE” in conformity with this Order.

13 h) The Receiving Party shall keep a log including: (1) the custodian of each copy of
14 any “HIGHLY CONFIDENTIAL – SOURCE CODE” materials; (2) the name of
15 all persons accessing the “HIGHLY CONFIDENTIAL – SOURCE CODE”
16 materials; and (3) the date and time of access of the “HIGHLY CONFIDENTIAL
17 – SOURCE CODE” materials.

18 i) An expert who has printed hard copies of source code may make electronic pdf
19 copies of those hard copies for purposes of preparing his or her expert report, but
20 must destroy such copies upon termination of the litigation.

21 All “HIGHLY CONFIDENTIAL – SOURCE CODE” materials, including all copies,
22 in the possession of the Receiving Party shall be maintained in a secured, locked area.

23 All “HIGHLY CONFIDENTIAL – SOURCE CODE” materials utilized during a
24 deposition or marked as an exhibit at a deposition will be retrieved by the party conducting
25 the deposition at the end of each day. At no time will any “HIGHLY CONFIDENTIAL –
26 SOURCE CODE” material be given to or left with the Court Reporter or any other individual.

27 Any brief, paper, pleading, or other submission to the Court that may contain copies,
28 portions, or excerpts of a Producing Party’s Source Code shall be filed under seal. The

1 Parties further agree that any brief, paper, pleading or other submission shall only contain as
2 much of the Source Code as the Party, in good faith, deems reasonably necessary. Any and
3 all such Source Code attachment shall be marked “HIGHLY CONFIDENTIAL - SOURCE
4 CODE” and to the extent submitted to the Court or presented at hearings or at trial.

5 Nothing in this Order shall obligate the Parties to produce any Source Code, nor shall
6 it act as an admission that any particular Source Code is discoverable.

7 12. With respect to material designated “CONFIDENTIAL” or
8 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” any person indicated on the face of the
9 document to be its originator, author or a recipient of a copy of the document, may be shown
10 the same.

11 13. All information which has been designated as “CONFIDENTIAL” or
12 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” by the producing or disclosing party,
13 and any and all reproductions of that information, must be retained in the custody of the
14 Counsel for the receiving party identified in paragraph 3, except that independent experts
15 authorized to view such information under the terms of this Order may retain custody of
16 copies such as are necessary for their participation in this litigation.

17 14. Before any materials produced in discovery, answers to interrogatories,
18 responses to requests for admissions, deposition transcripts, or other documents which are
19 designated as Confidential Information are filed with the Court for any purpose, the party
20 seeking to file such material must seek permission of the Court to file the material under seal.

21 15. At any stage of these proceedings, any party may object to a designation of the
22 materials as Confidential Information. If any such objection is made, the parties shall first
23 attempt to resolve any such dispute in good faith on an informal basis:

24 a. The party challenging the designation shall provide to the producing
25 party written notice of the disagreement, specifically identifying the
26 Confidential Information in dispute and articulating the challenging party’s
27 basis for its challenge of the confidentiality designation.

28 ///

1 b. The producing party shall respond in writing to the challenging party's
2 notice within seven (7) calendar days, articulating the basis for the producing
3 party's designation with sufficient particularity to enable the challenging party
4 to move the Court for permission to disclose the Confidential Information.

5 c. If the dispute cannot be resolved between the parties without
6 intervention from the Court, the party challenging the confidentiality
7 designation may move the Court requesting appropriate relief. In any such
8 question brought before the Court, the party asserting the confidentiality
9 designation shall bear the burden of proving by clear and convincing evidence
10 that the information should be maintained at the confidentiality level
11 designated by the producing party.

12 The materials at issue must be treated as Confidential Information, as designated by
13 the designating party, until the Court has ruled on the objection or the matter has been
14 otherwise resolved.

15 16. All Confidential Information must be held in confidence by those inspecting or
16 receiving it, and must be used only for purposes of this action. Counsel for each party, and
17 each person receiving Confidential Information must take reasonable precautions to prevent
18 the unauthorized or inadvertent disclosure of such information. If Confidential Information is
19 disclosed to any person other than a person authorized by this Order, the party responsible for
20 the unauthorized disclosure must immediately bring all pertinent facts relating to the
21 unauthorized disclosure to the attention of the other parties and, without prejudice to any
22 rights and remedies of the other parties, make every effort to prevent further disclosure by the
23 party and by the person(s) receiving the unauthorized disclosure.

24 17. No party will be responsible to another party for disclosure of Confidential
25 Information under this Order if the information in question is not labeled or otherwise
26 identified as such in accordance with this Order.

27 18. If a party, through inadvertence, produces any Confidential Information
28 without labeling or marking or otherwise designating it as such in accordance with this Order,

1 the designating party may give written notice to the receiving party that the document or
2 thing produced is deemed Confidential Information, and that the document or thing produced
3 should be treated as such in accordance with that designation under this Order. The receiving
4 party must treat the materials as confidential, once the designating party so notifies the
5 receiving party. If the receiving party has disclosed the materials before receiving the
6 designation, the receiving party must notify the designating party in writing of each such
7 disclosure. Counsel for the parties will agree on a mutually acceptable manner of labeling or
8 marking the inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL -
9 ATTORNEYS' EYES ONLY."

10 19. Nothing within this order will prejudice the right of any party to object to the
11 production of any discovery material on the grounds that the material is protected as
12 privileged or as attorney work product.

13 20. Nothing in this Order will bar Counsel from rendering advice to their clients
14 with respect to this litigation and, in the course thereof, relying upon any information
15 designated as Confidential Information, provided that the contents of the information must
16 not be disclosed.

17 21. This Order will be without prejudice to the right of any party to oppose
18 production of any information for lack of relevance or any other ground other than the mere
19 presence of Confidential Information. The existence of this Order must not be used by either
20 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
21 Procedure.

22 22. Nothing within this order will be construed to prevent disclosure of
23 Confidential Information if such disclosure is required by law or by order of the Court.
24 Further, nothing herein shall preclude a party from having Confidential Information copied,
25 reproduced, or adapted by an outside professional copying, reproduction, or demonstrative
26 exhibit preparation service, provided that such service and the party using such service take
27 all steps reasonably available to protect the confidentiality of such material.

28 ///

1 23. Third party witnesses may invoke all of the provisions of this Order which are
2 available to the parties. This provision does not abridge a third party's right to seek to quash
3 any subpoena served on it, or to seek to protect information sought by a party, either on the
4 third party's own motion or on a motion brought on its behalf by an objecting party. The
5 party seeking production from a third party witness who may possess Confidential
6 Information of the other party shall have the duty to provide a copy of this Order to that third
7 party witness prior to any production from that witness. The party seeking production shall
8 also have the duty to inform that third party witness of its rights under this Order and its
9 ability to designate any material it produces as Confidential Information. In addition, the
10 parties shall treat the Confidential Information of third parties in accordance with the terms of
11 this Order.

12 24. Upon final termination of this action, including any and all appeals, Counsel
13 for each party must, upon request of the producing party, return all Confidential Information
14 to the party that produced the information, including any copies, excerpts, and summaries of
15 that information, or must destroy same at the option of the receiving party, and must purge all
16 such information from all machine-readable media on which it resides. Notwithstanding the
17 foregoing, Counsel for each party may retain all pleadings, briefs, memoranda, motions, and
18 other documents filed with the Court that refer to or incorporate Confidential Information,
19 and will continue to be bound by this Order with respect to all such retained information.
20 Further, attorney work product materials that contain Confidential Information need not be
21 destroyed, but, if they are not destroyed, the person in possession of the attorney work
22 product will continue to be bound by this Order with respect to all such retained information.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ERISE IP, P.A.


Dated: March 1, 2012

/s/Abran Kean (with permission)
Adam P. Seitz
Abran J. Kean

PISANELLI BICE, PLLC
James J. Pisanelli
Jennifer L. Braster

Attorneys for Defendants/Counterclaimants
GARMIN INTERNATIONAL, INC. and
GARMIN USA, INC.

IT IS SO ORDERED:


~~UNITED STATES DISTRICT JUDGE~~
UNITED STATES MAGISTRATE JUDGE

Dated: March 7, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Defendants/Counterclaimants.

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

1. I am employed as _____ by _____

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the District of Nevada with respect to enforcement of the Protective Order.

1 6. I understand that any disclosure or use of “Confidential,” “Confidential -
2 Attorneys’ Eyes Only,” or “Highly Confidential – Source Code” information in any manner
3 contrary to the provisions of the Protective Order may subject me to sanctions for contempt
4 of court.

5
6 I declare under penalty of perjury that the foregoing is true and correct.

7
8 Date: _____